THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.19666 OF 1993

Date: 10-02-2006

Between:

M/s Lakshminarayana Ginning &

Oil Mills, Piduguralla, Guntur District

Rep. By its Managing Partner

Maddali Lakshminarayana and others.

… Petitioners

And

The Commissioner of Civil Supplies

& Ex.Officio Secretary to Governemtn,

Food & Civil Supplies Department,

Secretariat Buildings, Hyderabad and others.

… Respondents

O R D E R

This writ petition is filed for a writ of Mandamus declaring the order in G.O.Ms.No.264 Food and Civil Supplies (IV) Department dated

28.8.1993 of the 1st respondent – Commissioner of Civil Supplies and the proceedings of the 2nd respondent – Collector, Guntur District dated 27.1.1988 in proceedings No.1456/84-S-11 as illegal and arbitrary.

2. In the affidavit filed in support of the writ petition it is stated that the 1st petitioner is a ginning and ground nut oil mill engaged in the manufacture of edible oils and that the 2nd and 3rd petitioners also engaged in the manufacture of groundnut oil. The business premises of 2nd and 3rd petitioners is located in the business premises of 1st petitioner. On 2.7.1984 the vigilance authorities inspected the premises of the 1st petitioner and the 3rd respondent – Inspector of Police, Vigilance Cell, found that miller stored excess stocks of 5520.54 quintals of groundnut, 463 quintals of groundnut seed, 117.74 quintals of groundnut oil, 260.69 quintals of groundnut cake, 330 bags of urea and 750 bags of D.A.P. and seized the same under panchanama for violation of Clause 11(iv) of A. P. Scheduled Commodities (Licensing and Distribution) Order, 1982 and Clause 13(i)(B) of the Fertilizers Control Order, 1957. The 1st petitioner was issued with show cause notice and an explanation was filed thereto. The 2nd respondent passed order treating the entire stocks as belonging to the 1st petitioner and ordered confiscation of 828.35 quintals of groundnut seed being 25 per cent of the excess stock under proceedings No.1456/84-S.II dated 27.11.1988. The appeal preferred there against also ended in dismissal through impugned G.O. dated 28.8.1993. The case of the 1st petitioner is that it is not only dealer but also producer and therefore, the impugned orders are illegal.

3. The learned Government Pleader appearing for the respondent – Civil Supplies submitted that in similar circumstances, a Division Bench of this court in W.P.Nos.19663 and 19678 of 1993 dated 17.10 .1996 partly allow the writ petitions. The copy of the order in the said writ petitions is also produced.

4. The order dated 17.10.1996 reads as under:

> "These two writ petitions raise a common question with regard to the validity of the confiscation of groundnut and its products.
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> The seizure was effected on the ground of over storage. Insofar as the groundnut and its products are concerned, there is no price or distribution or movement control. This is the only control in so far as the controlling aspect is concerned barring storage beyond the permissible limits. The restriction varies from person to person. If one is a wholesaler, then the permissible quantity of storage is 500 quintals at a time. If he is a producer, then it is 1/8th of the aggregate of the preceding three years. There is no prohibition of a wholesaler being a producer even if he owns and runs a mill. In the instant cases, the petitioners had been contending even since the beginning that they are the producers and that they are entitled to store 1/8th of the aggregate of the preceding 3 years. The same was not at all considered by the authorities below. The authorities were under the misconception that the petitioners having failed to maintain separate accounts for wholesale commodities and produced commodities, cannot get any relief. But, the legal provision did not prohibit the petitioners from claiming in one capacity. The petitioners although were claiming in the capacity of producers and to consider their cases, but that has not been done. It is now too late to again remand the matter for that purpose for no fault of the petitioners. Having regard to the facts and circumstances of the case, the confiscation is reduced from 25% to 10% of the commodities, which were deemed as excess over the permissible limits.
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> The writ petition is allowed in-part to the extent indicated above. No costs."

5. From the narration of the facts in the affidavit filed in support of the writ petition it is clear that the case of the 1st petitioner is that it is not only whole sale traders, but also produces. The further case is that though this ground has been accepted, but no benefit has been give on the ground that no separate accounts were maintained.

6 . In view of the above facts and circumstances of the case and following the Division Bench judgment of this court referred to above, the confiscation is reduced from 25% to 10% of the commodities, which were deemed as excess over the permissible limits.

7. The writ petition is accordingly disposed of. No costs.

AVS ----------

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